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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/528,575	05/23/2005	Hidetoshi Satake	123255	8522
25944 7590 11/07/2008 OLIFF & BERRIDGE, PLC P.O. BOX 320850 ALEXANDRIA, VA 22320-4850				
EXAMINER				
MCGOWAN, JAMIE LOUISE				
ART UNIT		PAPER NUMBER		
3671				
MAIL DATE		DELIVERY MODE		
11/07/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/528,575

Applicant(s)

SATAKE ET AL.

Examiner

JAMIE L. MCGOWAN

Art Unit

3671

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 August 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5 and 7-11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5 and 7-11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)
Paper No(s)/Mail Date _____

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Inventor's Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

2. Claims 1, 2, 7, 10 and 11 are rejected under 35 U.S.C. 102(a) as being anticipated by Kazuhiro et al. (2001-295681) (cited by applicant).

Regarding claim 1, Kazuhiro et al. discloses a construction machine comprising:

- A variable displacement hydraulic pump (3) driven by a prime mover (2) (paragraph 0009)
- A single traveling actuator (1) driven with pressure oil discharged from the hydraulic pump (3) (paragraph 0009)
- A plurality of work actuators (34) driven with the pressure oil discharged from the hydraulic pump (3) (paragraph 0018-009)
- A plurality of control valves (4,5,6,33) that control flows of the pressure oil from the hydraulic pump (3) to each of the traveling actuator and the plurality of work actuators
- A detection device (42) that detects a drive command for the traveling actuator (1) (paragraphs 0013 and 0022)
- A flow rate control device (50) that increases a maximum flow rate of the hydraulic pump (3) when the drive command for the traveling actuator is detected with the detection device (42) (paragraphs 0022 and 0027), the flow rate control device comprises a displacement angle control device (11) that adjusts a maximum displacement angle of the hydraulic pump and increases the maximum displacement angle when the drive command for the traveling actuator is detected with the detection device (paragraph 0010)

Regarding claim 2, the construction machine is a wheeled hydraulic excavator (paragraph 0008).

Regarding claim 7, the flow rate control device (50) further comprises a rotation speed control device (53) that controls a rotations peed of the prime mover, and increases the rotations speed of the prime mover as well as increasing the maximum displacement angle of the hydraulic pump when the drive command for the traveling actuator is detected with the detection device.

Regarding claim 8, the hydraulic pump (3) comprises a first hydraulic pump (3) that supplies the pressure oil to at least the traveling actuator and a second hydraulic pump (21) that supplies the pressure oil to at least actuators other than the traveling actuator, and only the maximum displacement angle of the first hydraulic pump is increased when the drive command for the traveling actuator is detected with the detection device.

Regarding claim 9, the machine further comprises a work command detection device (504) that detects a work command for the plurality of work actuators to operate a front attachment, wherein the displacement angle control device does not increase the maximum displacement angle when the work command for the plurality of work actuators is detected with the work command detection device even when the drive command for the traveling actuator is detected with the detection device.

Regarding claim 10, the machine further comprises:

- A travel pedal (22) that is operated to drive the traveling actuator
- A target rotation speed calculation unit (Nt - paragraph 0040) for traveling that calculates a first target rotation speed of the prime mover which is set suitable for traveling in accordance with an extent to which the travel pedal is operated

- A target rotation speed calculation unit (NdI) for working that calculates a second target rotation speed of the prime mover which is set suitable for working in accordance with an extent to which the travel pedal is operated (paragraph 0040)
- Wherein a maximum value of the first target rotation speed for the traveling is set greater than a maximum value of the second target rotation speed for working (paragraph 0042)

Regarding claim 11, a work command detection device that detects a work command for the plurality of work actuators to operate a front attachment (504) wherein the rotation speed control device controls the rotation speed of the prime mover to the second target rotation speed for working when the work command for the plurality of work actuators is detected with the work command detection device (paragraph 0040).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 3-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kazuhiro et al. (2001-295681) (cited by applicant) as applied to claim 1 above, and further in view of Fujishima et al. (6,169,948).

Regarding claims 3-5, Kazuhiro et al. discloses the invention as described above, but fails to specifically disclose individual actuators for the revolving control, the arm, bucket, and for two endless tracks (The examiner takes Official Notice that endless tracks are equivalent to wheels in the construction machine art and could be easily substituted) and individual valves associated with each actuator. Like Kazuhiro et al., Fujishima et al. discloses a hydraulic system for a construction machine. Unlike

Kazuhiro et al., Fujishima et al. further discloses individual actuators (3a-3f) and individual valves (5a-5f). It would have been obvious to one of ordinary skill in the art at the time the invention was made to include the individual actuators and valves for each component of the system in the device of Kazuhiro et al. as taught by Fujishima et al. to provide the operator with greater control of the equipment.

Response to Arguments

5. Applicant's arguments with respect to claims 1-5 and 7-11 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JAMIE L. MCGOWAN whose telephone number is (571)272-5064. The examiner can normally be reached on Monday through Friday 8:00 AM to 5:00 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will can be reached on (571)272-6998. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Thomas B Will/
Supervisory Patent Examiner
Art Unit 3671

JLM
November 4, 2008